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D.C. OFFICE OF ZONING
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March 27, 2003

VIA HAND DELIVERY

Carol J. Mitten, Chair
The Zoning Commission for the District of Columbia
441 4th Street N.W.
Suite 210 South
Washington, D.C. 20001

Re: Zoning Commission Case Number 02-34
Proposed Text Amendment on Optical Transmission Nodes (OTN's)

Dear Chairman Mitten:

This firm represents Comcast Cable of the District of Columbia. In that capacity, we are pleased to provide comments on the proposed text amendments regarding Optical Transmission Nodes (OTN's). As you may know, we were involved at the early stages when the issue first arose, and have participated in discussions with the Office of Planning (OP) as this text amendment has developed. While Comcast believes that the OP recommendations positively address a number of issues, we also believe there are a few additional points that should be considered.

First, it should be said that the deployment of OTN's throughout the District of Columbia are in furtherance of a very important program being undertaken by Comcast to provide state-of-the-art cable services and high-speed Internet access over cable modems. OTN's are necessary distribution and collection points for cable signals, and the location of these facilities throughout the District is vital to the network. Comcast obligated itself to the provision of these services in connection with its franchise with the District of Columbia. OTN's are an innocuous use—they do not generate noise or harmful emissions, they do not generate traffic or trash, they have no impact on services such as water or sewer, and they do not add to the demands on schools. In fact, the presence of an OTN is beneficial because it allows for the provision of enhanced cable and Internet services.

ZONING COMMISSION
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Exhibit 8

ZONING COMMISSION
District of Columbia
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EXHIBIT NO.8

Second, as a land use matter, we submit that the only legitimate issue of concern is in the case of a new, free-standing structure. In other words, where an OTN is located in interior space, such as a basement, there is no basis for restriction of the use. What is the objection if a 1,500 square foot space in the basement of a commercial building or hotel contains such a facility?

We note that there is an apparent ambiguity in the proposed text on this point: OTN's are defined as "facilities" in subsection 199.1 and permitted first as a by right use in the C-1 zone. However, the special exception criteria contained in subsections 509.2, 608.2, and 907.2 all address "(a)ny new construction solely for the purpose of housing (OTN's)". The Zoning Commission should clarify this point. We suggest that the "facilities" that the regulations need to address are new, free-standing structures and not interior facilities. One could interpret the proposed text to require special exception relief for interior construction unless the underlying zoning is C-1 or greater.

In connection with its deployment of OTN's, Comcast has been able to take advantage of commercially zoned properties and interior spaces. However, the regulations will be in place for some time and there may be other facilities. We suggest that the Commission give serious consideration to the appropriateness of regulating interior space for such facilities.

Finally, in subsection 608.1, the proposed text would require that an applicant for a special exception in the CR district must demonstrate that the facility would be "appropriate in furthering the objectives of the Mixed Use districts". This is a difficult burden to carry. OTN's are necessary for the provision of cable services and high-speed Internet access and necessary under the terms of the franchise to provide cable to all the customers in the District. In a case where there is opposition to the special exception, it will be tough to prove furtherance of the Mixed Use objectives, however.

Thank you for the opportunity to present these comments. We wish to commend the staff at the Office of Planning for the hard work on these recommendations. If there are further hearings or opportunities for involvement, we welcome the chance to participate.

Sincerely,

Edward L. Donohue

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